

In the United States Court of Federal Claims

GENERAL ORDER NO. 34

In accordance with the notice of rules revision dated March 23, 1993, and the **60-day** comment period allowed thereunder, it is this date ordered as follows:

1. The attached Rules Governing Complaints of Judicial Misconduct and Disability (with Commentary) are adopted as part of the Rules of the United States Court of Federal Claims.

2. The text of Appendix B of the court's rules is deleted and in lieu thereof the following is substituted:

The procedures for processing complaints of judicial misconduct pursuant to 28 U.S.C. § 372(c), previously set forth in this Appendix B, have been revised and updated and now appear in a separate booklet. A copy of these procedures is available, upon request, from the Office of the Clerk.

BYTHECOURT

A handwritten signature in black ink, appearing to read "Loren A. Smith", written over a horizontal line.

LOREN A. SMITH
CHIEF JUDGE

DATE: June 2, 1993

RULES OF THE
UNITED STATES COURT
OF FEDERAL CLAIMS

GOVERNING COMPLAINTS OF JUDICIAL
MISCONDUCT AND DISABILITY
(WITH COMMENTARY)

Prescribed under authority of 28 U.S.C. § 372(c)(18).

Promulgated originally as Appendix B, effective October 1, 1982.
Revised June 2, 1993, effective June 2, 1993.

**FINAL RULES
OF THE UNITED STATES COURT OF FEDERAL CLAIMS
GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY**

(ADOPTED JUNE 2, 1993)

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RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS
GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY

Preface to the Rules

Section 372(c) of title 28 of the United States Code provides a way for any person to complain about a federal judge who the person believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” or “is unable to discharge all the duties of office by reason of mental or physical disability.” It also permits this court to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the court, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see rule 18(f).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under section 372(c). **The** chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in either of these two ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the court, which decides what action, if any, should be taken.

The rules provide, in some circumstances, for review of decisions of the chief judge or of the court.

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) Purpose of the procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties. The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

(b) What may be complained about. The law authorizes complaints about United States circuit judges, district judges, national court judges, bankruptcy judges, and magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability. "

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" is not a precise term. It includes such things as use of the judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office. It does not include making wrong decisions--even very wrong decisions--in cases. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling. "

"Mental or physical disability" may include temporary conditions as well as permanent disability.

(c) Who may be complained about. The complaint procedure applies to judges of the United States courts of appeals, judges of the United States district courts, judges of the United States national courts, judges of United States bankruptcy courts, and United States magistrate judges. These rules apply, in particular, only to judges of the Court of Federal Claims.

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The clerk of the court, whose address is 717 Madison Place, N.W., Washington, D.C. 20005, is sometimes able to provide assistance in resolving such complaints.

(d) Time for filing complaints. A complaint may be filed at any time. However, complaints should be filed promptly. A complaint may be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible. A complaint may also be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts.

(e) Limitations on use of the procedure. The complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case. The court, acting under this complaint procedure, does not have the power to change a decision or ruling of a judge.

. The complaint procedure may not be used to have a judge disqualified from sitting on a particular case. A motion for disqualification should be made in the case.

Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been before the judge too long. A petition for mandamus can sometimes be used for that purpose.

Commentary on Rule 1

Advice to Prospective Complainants on Use of the Complaint Procedure

As at least some members of Congress anticipated, a great many of the complaints that have been filed under section 372(c) have been filed by litigants disappointed in the outcomes of their cases.¹ Some complaints allege nothing more than that the decision was in violation of established legal principles. Many of them allege that the judges are members of conspiracies to deprive the complainants of their rights, and offer the substance of the judicial decision as the only evidence of the conspiratorial behavior. A great many of the complaints seek various forms of relief in the underlying litigation.

Rule 1 is **intended** to provide prospective complainants with guidance about the appropriate uses of the complaint procedure. Paragraph **(b)** discusses cognizable subject matters, and paragraph **(c)** discusses cognizable persons. Paragraph **(e)** discusses remedies, and attempts to make it clear that the court will not provide relief from a ruling or judgment of a judge. It is hoped that such guidance will reduce the number of complaints filed that seek relief that cannot be given under the statute or deal with matters that are plainly not cognizable.

The last two paragraphs in rule 1(e), dealing with complaints alleging bias and those alleging undue delay, are in accord with decisions in some circuits. The use of the complaint procedure is not, however, limited to cases in which a judge has committed an impropriety. The phrase "conduct prejudicial to the effective and expeditious administration of the business of the **courts**" is derived from 28 U.S.C. § 332(d)(1), and is generally understood not to be limited to conduct that is unethical or corrupt. Thus, habitual failure to decide matters in a timely fashion may be regarded as the proper subject of a complaint where it is demonstrated that, over a period of years, the judge has persistently and unreasonably neglected to act on a substantial number of cases.

¹ See 125 Cong. Rec. 30,093-94 (1979) (remarks of Sen. Bellmon); 126 Cong. Rec. 28,091 (1980) (remarks of Sen. DeConcini); H.R. Rep. No. 1313, 96th Cong., 2d Sess. 18-19 (1980).

Venue

Rule 1(c) states that the complaint procedure applies to judges “of the United States Court of Federal Claims.” This language is intended to make it clear that the court in which a judge holds office is the appropriate court in which to **file** a complaint, regardless of where the alleged misconduct occurred.

Complaints Against Other Officials

The second paragraph of rule 1(c) reflects a concern that the public be given some guidance about how to pursue grievances about court officials other than judges. The rule adopts the position that complaints about court administrative personnel are, in most instances, best dealt with **by** referring the matter to supervisory staff. The clerk of the court can be expected to provide guidance in such matters.

Time Limitation

These rules do not contain a time limit for the filing of a complaint. However, rule 1(d) indicates that a complaint may be dismissed, for reasons analogous to **laches**, if the delay in **filing** the complaint would prejudice the ability of the court to give fair consideration to the matter. This approach seems fully consonant with the congressional intent underlying the 1990 amendment to 28 U.S.C. § 372(c)(11)² that no rule shall limit the time period within which a complaint may be filed. As the report of the House Judiciary Committee upon this amendatory legislation stated:

Subsection **101(e)** [of H.R. **1620**] amends this statutory framework by narrowing the rule-making power of the court so that a court cannot create a statute of limitations. Statutes of limitations, which are substantive in nature and not procedural, are for the Congress to make and not for the rulemakers. However, dismissal--on a case-by-case basis--may be appropriate, considering the individual equities involved. Emphasis supplied.] H.R. Rep. No. 101-512, **101st** Cong. 2d Sess. 20 (1990).

RULE 2. HOW TO FILE A COMPLAINT

(a) **Form.** Complaints should be filed on the official form for filing complaints in this court, a copy of which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the clerk of the court of the United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005. Forms may be picked up in person at the office of the clerk.

(b) **Statement of facts.** A statement should be attached to the complaint form, setting forth with particularity the facts on which the claim of misconduct or disability is based. **The** statement

² Judicial Discipline and Removal Reform Act of 1990, Public Law No. 101-650, title IV, § 402(e), 104 Stat. **5089, 5123.**

should not be longer than five pages (five sides), and the paper size should not be larger than the paper the form is printed on. Normally, the statement of facts will include-

(1) A statement of what occurred;

(2) The time and place of the occurrence or occurrences;

(3) Any other information that would assist an investigator **in** checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

(c) Legibility. Complaints should be typewritten if possible. If not typewritten, they must be legible.

(d) Submission of documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

(e) Number of copies. If the complaint is about a single judge of the court, three copies of the complaint form, the statement of facts, and any documents submitted must be filed. If the complaint is about more than one judge, enough copies must be filed to provide one for the clerk of the court, one for the chief judge of the court, and one for each judge complained about.

(f) Signature and oath. The form must be signed and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant's address must also be provided.

(g) Anonymous complaints. Anonymous complaints are not handled under these rules. However, anonymous complaints received by the clerk will be forwarded to the chief judge of the court for such action as the chief judge considers appropriate. See rule 20.

(h) Where to file. Complaints should be sent to:

Clerk, United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20005

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge complained about should *not* appear on the envelope.

(i) No fee required. There is no filing fee for complaints of misconduct or disability.

(j) Chief judge's authority to initiate complaint. In the interest of effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the court, the chief judge may, by written order stating reasons therefor, identify a complaint as authorized by 28 U.S.C. § 372(c)(1) and thereby dispense with the filing of a written

complaint. A chief judge who has identified a complaint under this rule will not be considered a complainant and, subject to the second sentence of rule 18(a), will perform all functions assigned to the chief judge under these rules for the determination of complaints filed by a complainant.

Commentary on Rule 2

Use of Complaint Form

Paragraph (a) of rule 2 provides that complaints be filed on a form. Use of a complaint form is proposed for two reasons.

First, a complaint form provides a simple means of eliciting some fairly standard information that is helpful in administering the act.

Second, the use of a complaint form will resolve ambiguities that sometimes arise about whether the author of a complaining letter intends to invoke the procedures of section 372(c). With the use of the form, the 372(c) procedure will be used only if the complainant clearly invokes it.

Limitation on Length of Complaint

Paragraph (b) of rule 2 provides a five-page limit on the statement of facts. Paragraph (d), however, does not restrict the volume of documents that may be submitted as evidence of the behavior complained about. It is hoped that a five-page limit will deter long, rambling complaints that do not clearly identify the conduct complained of without unduly restricting the ability to communicate the facts supporting a complaint.

The provision allowing submission of documentary evidence is partly motivated by the concern that a complainant not be unduly restricted in presenting the factual basis of the complaint, but also reflects a sense that prohibiting the submission of documents with the complaint tends to make the procedure unnecessarily complex. In many cases, a chief judge will have to ask for documents if they haven't been submitted.

Complaints Against More than One Judicial Officer

A separate complaint for each judicial officer complained about is not required under these rules.

Oath or Declaration

Rule 2(f) includes a requirement that complaints be signed and verified under oath or declaration. This requirement is intended to deter occasional abuse of the complaint process. In view of the ease with which a complainant can make a declaration under penalty of perjury, the requirement should not be burdensome. As indicated below, anonymous complaints should not be handled under the section 372(c) procedure; the requirement of an oath or declaration would be inconsistent with a policy of accepting such complaints.

Under 28 U.S.C. § 1746, any statement required by rule to be made under an oath in writing may be subscribed instead with a written declaration under penalty of perjury that the statement is true and correct. 18 U.S.C. § 1621 includes in the definition of perjury a willfully false statement subscribed pursuant to 18 U.S.C. § 1746. There is some question about the authority of a court to require a declaration under penalty of perjury, not made in lieu of an oath. To avoid this technical problem, rule 2(f) prescribes an oath but informs prospective complainants of the availability of the alternative. The complaint form permits either method.

Anonymous Complaints

Whether an anonymous complaint should be accepted is a question of some difficulty. On the one hand, section 372(c) clearly contemplates a complainant whose identity and address are known and who therefore can receive notice of decisions taken, be offered the opportunity to appear at proceedings of a special committee, and be accorded the opportunity to petition for review if dissatisfied with the disposition of the complaint. On the other hand, a prohibition against anonymous complaints may effectively bar complaints from the two groups of citizens most likely to have knowledge of serious problems in the administration of justice: lawyers and court employees.

The resolution reflected in rule 2(g) is to require that complaints under section 372(c) be signed but to make it clear that chief judges can, just as they always have, consider information from any source, anonymous or otherwise. This solution is consistent with congressional expressions of intention that informal methods of resolving problems, traditionally used under section 372, should continue to be used in many cases.³ Hence, under these rules, the formalities of the statute would not be invoked by an anonymous complaint, but the chief judge and the court may nevertheless consider it. Information obtained from an anonymous complaint could also provide a basis for identification of a complaint by the chief judge under rule 2(j).

Identification of Complaints

Section 372(c)(1), as amended by section 402(a) of the Judicial Discipline and Removal Reform Act of 1990, authorizes the chief judge, by written order stating reasons therefor, to identify a complaint and thereby bring the disciplinary mechanisms of section 372 into play in the absence of the filing of a written complaint.

Congress has expressed the intention that "[i]n exercising this discretion [to identify a complaint], the chief judge must enter a written order explaining the reasons for waiving the written complaint requirement and must further identify the **complaint**."⁴ Because the identification of a complaint is within the discretion of the chief judge, a chief judge's failure to identify a complaint

³ See S. Rep. No. 362, 96th Cong., 1st Sess. 3-4, 6 (1979); 126 Cong. Rec. 28,092 (1980) (remarks of Sen. DeConcini on final passage).

⁴ H.R. Rep. No. 512, 101st Cong., 2d Sess. 18 (1990).

will not ordinarily constitute a proper basis for the filing of a complaint of misconduct against the chief judge under section 372.

Rule **2(j)** provides that once the chief judge has identified a complaint, the chief judge (subject to the disqualification provisions of rule **18(a)**) will perform all functions assigned to the chief judge for the determination of complaints filed by a complainant. Rule 2(j) contemplates, therefore, that the identification of a complaint by the chief judge will advance the process no further than would the filing of a complaint by a complainant. Once a complaint has been identified, it will be treated in a manner identical to a **filed** complaint under these rules. Thus, for example, under rule 4(e) a special committee ordinarily will not be appointed to investigate an identified complaint until the judge who is the subject of the complaint has been invited to respond to the complaint and has been allowed a reasonable time to do so. Similarly, under rule 4 the chief judge has the same options in the investigation and determination of an identified complaint that the chief judge would have had if the complaint had been filed.

RULE 3. ACTION BY CLERK OF COURT UPON RECEIPT OF A COMPLAINT

(a) Receipt of complaint in proper form.

(1) Upon receipt of a complaint against a judge filed in proper form under these rules, the clerk of the court will open a file, assign a docket number, and acknowledge receipt of the complaint. The clerk will promptly send copies of the complaint to the chief judge (or the judge authorized to act as chief judge under rule **18(f)**) and to each judge whose conduct is the subject of the complaint. **The** original of the complaint will be retained by the clerk.

Upon the issuance of an order by the chief judge identifying a complaint under rule 2(j), the clerk will thereafter expeditiously process such complaint as otherwise provided by these rules.

(b) Receipt of complaint about official other than a judge. If the clerk receives a complaint about an official other than a judge, the clerk will not accept the complaint for filing and will advise the complainant in writing of the procedure for processing such complaints.

(c) Receipt of complaint about a judge and another official. If a complaint is received about a judge and another official, the clerk will accept the complaint for filing only with regard to the judge, and will advise the complainant accordingly.

(d) Receipt of complaint not in proper form. If the clerk receives a complaint against a judge that uses the complaint form but does not **comply** with the requirements of rule 2, the clerk will normally not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge is received in letter form, the clerk will normally not accept the letter for filing as a complaint, will advise the writer of the right to file a formal complaint under these rules, and will enclose a **copy** of these rules and the accompanying forms.

Commentary on Rule 3

Role of the Clerk

Rule 2(h) follows the statutory language and provides that complaints are to be filed with the clerk of the court. The statute also directs the clerk to transmit copies of a complaint to the **chief** judge and to the judge complained of (reflected in rule 3(a)). **This provision is** included in recognition of the responsibility of every chief judge for the administration of his or her court.

Chapter II: Review of a Complaint by the Chief Judge

RULE 4. REVIEW BY THE CHIEF JUDGE

(a) Purpose of chief judge's review. When a complaint in proper form is sent to the chief judge by the clerk's office, the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that corrective action has **been** taken, (3) concluded because intervening events have made action on the complaint no longer necessary, or (4) referred to a special committee.

(b) Inquiry by chief judge. In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, (2) whether intervening events have made action on the complaint unnecessary, and (3) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. The chief judge may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge will not undertake to make findings of fact about any matter that is reasonably in dispute.

(c) Dismissal. A complaint will be dismissed if the chief judge concludes-

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Corrective action. The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint or that action on the complaint is no longer necessary because of intervening events.

(e) Appointment of special committee. If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee, constituted as provided in rule 9, to investigate the complaint and make recommendations to the court. However, ordinarily a special committee will not be appointed until the judge complained about has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee; similarly, a single complaint **about more** than one judge may be severed and more than one special committee appointed.

(f) Notice of chief judge's action.

(1) If the complaint **is** dismissed or the proceeding concluded on the basis of corrective action taken or because intervening events have made action on the complaint unnecessary, the chief judge will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. The memorandum will not include the name of the complainant or of the judge whose conduct was complained of. The order and the supporting memorandum will be provided to the complainant, the judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). The complainant will be notified of the right to petition the court for review of the decision and of the deadline for filing a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge whose conduct is complained of, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2) that the matter has been referred, and will inform them of the membership of the committee.

(g) Public availability of chief judge's decision. Materials related to the chief judge's decision will be made public at the time and in the manner set forth in rule 17.

(h) Report to the court. The chief judge will from time to time report to the court on actions taken under this rule.

Commentary on Rule 4

Expeditious Review

The statute requires the chief judge to review a complaint "expeditiously." It should be a rare case in which more than a month is permitted to elapse from the filing of the complaint to the chief judge's action on it.

Purpose of Chief Judge's Review

Although the statute permits the chief judge to conclude the proceeding "if he **finds** that" appropriate corrective action has been taken, it seems clear that the chief judge, in cases in which a complaint appears to have merit, should make every effort to determine whether it is possible to fashion a remedy without the necessity of appointing a special committee. The formal investigatory procedures are to be regarded as a last resort; the remedial purposes of the statute are on the whole better and more promptly served if an informal solution can be found that will correct the problem giving rise to a complaint.

Inquiry by Chief Judge

The chief judge is not required to act solely on the face of the complaint. The power to conclude a complaint proceeding on the basis that corrective action has been taken implies some power to determine whether the facts alleged are true. But the boundary line of that power--the point at which a chief judge invades the territory reserved for special committees--is unclear. Rule 4(b) addresses that issue by stating that the chief judge may conduct a limited inquiry to determine whether the facts of the complaint are "either plainly untrue or are incapable of being established through investigation," and that the chief judge "will not undertake to make findings of fact about any matter that is reasonably in dispute." Admittedly, this formulation may do little more than state the obvious, leaving the most difficult questions unanswered. Offered here, as commentary, are some suggestions about the implementation of this principle.

(1) The complaint alleges an impropriety and asserts that complainant knows of it because voices told him. It would appear clearly appropriate to treat such a complaint as frivolous.

(2) The complaint alleges an impropriety and asserts that complainant knows of it because it was observed and reported to the complainant by a person whom the complainant is not free to identify. The judge denies that the event occurred. In some instances similar to this, chief judges have dismissed the complaint, reasoning that there is nothing to fuel an investigation. The statutory basis for the dismissal does not seem strong, but the result seems eminently sensible unless one thinks that it is appropriate for a special committee to subpoena the complainant and insist on the identity of the source. On balance, it would appear that the complaint should be dismissed as frivolous in such a case.

(3) The complaint alleges an impropriety and asserts that complainant knows of it because it was observed and reported to the complainant by a person who is identified. The judge denies that the event occurred. When contacted, the source also denies it. In such a case, the chief judge's proper course of action may well turn on whether the source had any role in the allegedly improper conduct. If the complaint were based on a lawyer's statement that the complainant had had an improper ex parte contact with a judge, the lawyer's denial of the impropriety might not be taken as wholly persuasive, and it seems appropriate to conclude that a real factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and the disinterested party denied that the statement had been made, there would not appear to be any value in opening a formal investigation. In

such a case, it would seem appropriate to dismiss the complaint as frivolous on the basis that there is no support for the allegation of misconduct.

(4) The complaint alleges an impropriety and asserts that complainant observed it and there were no other witnesses; the judge denies that the event occurred. This situation presents the possibility of a simple credibility conflict. Unless the complainant's allegations are wholly implausible, it would appear that a special committee must be appointed because there is a factual question that is reasonably in dispute.

Grounds for Dismissal of Complaints

Rule 4(c)(4) provides that a complaint may be dismissed as "otherwise not appropriate for consideration." This language is intended to accommodate dismissals of complaints for reasons such as untimeliness (see rule 1(d)) or mootness.

Opportunity of Judge to Respond

Rule 4(e) states that a judge will ordinarily be invited to respond to the complaint before a special committee is appointed.

Judges, of course, receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them. Under rule 4(b), the chief judge may request a response if it is thought necessary. However, many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the judge complained about to devote time to a defense. By stating that a special committee will not ordinarily be appointed unless an invitation to respond has been issued by the chief judge, the rule should encourage officials not to respond unnecessarily.

Notification to Complainant and Judge

Section 372(c)(3) requires that the order dismissing a complaint or concluding the proceeding contain a statement of reasons and that a copy of the order be sent to the complainant. It appears that in most courts it is the practice to prepare a formal order disposing of the complaint and a separate memorandum of reasons. In such a case, both the order and the memorandum are provided to the complainant. Rule 4(f) would accept that practice. Rule 17, dealing with availability of information to the public, contemplates that the memorandum would be made public, usually without disclosing the names of the complainant or the judge involved.

Rule 4(f) also provides that the complainant will be notified, in the case of a disposition by the chief judge, of the right to petition the court for review. Although the complainant should in all cases have a copy of the court rules at the time the complaint is filed, it seems appropriate to provide a reminder at the time of dismissal of the complaint.

Chapter III: Review of Chief Judge's Disposition of a Complaint

RULE 5. PETITION FOR REVIEW OF CHIEF JUDGE'S DISPOSITION

If the chief judge dismisses a complaint or concludes the proceeding on the ground that corrective action has been taken or that intervening events have made action unnecessary, a petition for review may be addressed to the court. The court may **affirm** the order of the chief judge, return the matter to the chief judge for further action, or, in exceptional cases, take other appropriate action.

Commentary on Rule 5

Petition to the Court for Review

Section 372(c)(10) provides that a complainant, or judge, aggrieved by a chief judge's order dismissing a complaint or concluding a proceeding on the basis of corrective action or intervening events may "petition the [court] for review thereof."

The court should ordinarily review the decision of the chief judge on the merits, treating the petition for review for all practical purposes as an appeal. This view has been carried into the rules, which state that the court may respond to a petition by affirming the chief judge's order, remanding the matter, or, in exceptional cases, taking other appropriate action. The "exceptional cases" language would permit the court to deny review rather than **affirm** in a case in which the process was obviously being abused.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(a) **Time.** A petition for review must be received in the office of the clerk within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

(b) **Form.** A petition should be in the form of a letter, addressed to the clerk of the court, beginning "I hereby petition the court for review of the chief judge's order" There is no need to enclose a copy of the original complaint.

(c) **Legibility.** Petitions should be typewritten if possible. If not typewritten, they must be legible.

(d) **Number of copies.** Only an original is required.

(e) **Statement of grounds for petition.** The letter should set forth a *brief* statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the court considering the petition.

(f) Signature. The letter must be signed.

(g) Where to file. Petition letters should be sent to:

Clerk, United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20005

The envelope should be marked “Misconduct Petition” or “Disability Petition.” The name of the judge complained about should **not** appear on the envelope.

(h) No fee required. There is no fee for filing a petition under this procedure.

Commentary on Rule 6

Time for Filing Petition for Review

There should be some time limit on petitions for review of chief judges’ dispositions **in** order to provide finality to the process. If the complaint requires an investigation, the investigation should proceed; if it does not, the judge complained about should know at some point that the matter is closed. On the other hand, the time limit should be relatively generous in recognition of the fact that most complainants are unrepresented and many are not well organized to maintain the discipline of -court deadlines. The thirty-day limit set out in Rule 6(a) is included with these considerations in mind.

In accordance with this generous approach, rule 7(c) of the rules provides for an automatic extension of the time if a person files a petition that is rejected for failure to comply with formal requirements.

RULE 7. ACTION BY CLERK OF COURT UPON RECEIPT OF A PETITION FOR REVIEW

(a) Receipt of timely petition in proper form. Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the clerk of the court will acknowledge receipt of the petition. The clerk will promptly send to each member of the court, except for any member disqualified under rule 18, copies of (1) the complaint form and statement of facts, (2) any response filed by the judge, (3) any record of information received by the chief judge in connection with the chief judge’s consideration of the complaint, (4) the chief judge’s order disposing of the complaint, (5) any memorandum in support of the chief judge’s order, (6) the petition for review, (7) any other documents in the files of the clerk that appear to be relevant and material to the petition, (8) a list of any documents in the clerk’s files that are not being sent because they are not considered relevant and material, and (9) a ballot that conforms with rule 8(a). The clerk will also send the same materials, except for the ballot, to the chief judge, and each judge whose conduct is at issue, except that materials previously sent to a person may be omitted.

(b) Receipt of untimely petition. The clerk will refuse to accept a petition that is received after the deadline set forth in rule 6(a). .

(c) Receipt of timely petition not in proper form. Upon receipt of a petition filed **within** the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the clerk will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of the date of the clerk's letter or within the original deadline for filing the petition, whichever is later. **If** the deficiencies are corrected within the time allowed, the clerk will **proceed** in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the clerk will reject the petition.

Commentary on Rule 7

Transmittal of Documents by Clerk

The rules include no limit on the volume of documents that may be submitted in support of a complaint. One of the problems created by this liberality is that some complaint files may get very thick with attachments. Hence, it was thought appropriate that the clerk have some discretion to decide what portions of the file should be duplicated and transmitted to the court. Rule 7(a) provides such discretion but requires the clerk to furnish a list of the documents not transmitted. Rule **8(b)** enables each member of the court, as well as the judge complained about, to obtain a copy of any document not originally transmitted by the clerk.

RULE 8. REVIEW BY THE COURT OF A CHIEF JUDGE'S ORDER

(a) Ballots. Each member of the court to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the clerk of the court. The ballot form will provide opportunities to vote to (1) affirm the chief judge's disposition, or (2) place the petition on the agenda of a meeting of the court. **The** form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Votes will be tabulated when all members of the court to whom ballots were sent have either voted or indicated that they are disqualified. After 20 days from the date the petition and related materials were sent to members of the court, votes may be tabulated if they have been cast by at least two-thirds of the members to whom ballots were sent. Members who have disqualified themselves will be treated for this purpose as if ballots had not been **sent** to them.

If all of the votes cast should be for **affirmance**, the chief judge's order will be affirmed. If any member votes to **place** the petition on the agenda of the court, that will be done.

(b) Availability of documents. Upon request, the clerk will make available to any member of the court or to the judge complained about any document from the files that was not sent to the court pursuant to rule 7(a).

(c) Vote at meeting of court. If a petition is placed on the agenda of a meeting of the court, action may be taken by a majority of the members present and voting.

(d) Rights of judge complained about.

(1) At any time after the filing of a petition for review by a complainant, the judge complained about may file a written response with the clerk of the **court**. **The clerk** will promptly distribute copies of the **response** to each member of the court who **is not** disqualified, to the chief judge, and to the complainant. The judge may not communicate with individual court members about the matter, either orally or in writing.

(2) The judge complained about will be provided with copies of any **communications** that may be addressed to the members of the court by the complainant.

(e) Notice of court decision.

(1) The order of the court, together with any accompanying memorandum in support of the order, will be provided to the complainant, the judge, and any judge entitled to receive a **copy** of the complaint pursuant to rule 3(a)(2).

(2) If the decision is unfavorable to the **complainant**, the complainant will be notified that the law provides for no further review of the decision.

(3) A memorandum supporting a **court** order will not include the name of the complainant or the judge whose conduct was complained of. If the order of the court affirms the chief judge's disposition, a supporting memorandum will be prepared only if the **court** concludes that there is a need to supplement the chief judge's explanation.

(f) Public availability of court decision. Materials related to the court's decision will be made public at the time and in the manner set forth in rule 17.

Commentary on Rule 8

Voting Procedures

The use of ballots on petitions for review appears to be common practice. Rule 8(a) adopts the procedure but modifies it to assure that there will be full discussion in the **court** if any member believes that summary **affirmance** may not be appropriate. Any member of the **court** may cause the question to be placed on the agenda of a **court** meeting.

A vote to affirm on the ballot is intended to be a vote on the merits. The "rule of one" is intended to guarantee an opportunity for discussion and a vote following discussion if any member of the **court** is uncomfortable with a summary affirmance.

Chapter IV: Investigation and Recommendation by Special Committee

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

(a) **Membership.** A special committee appointed pursuant to rule 4(e) will consist of the chief judge of the court and not less than two other judges of the court.

(b) **Presiding officer.** At the time of appointing the committee, the chief judge will designate one of its members (who may be the chief judge) as the presiding officer. When designating another member of the committee as the presiding officer, the chief judge may also delegate to such member the authority to direct the clerk of the court to issue subpoenas related to proceedings of the committee.

(c) **Provision of documents.** The chief judge will certify to each other member of the committee copies of (1) the complaint form and statement of facts, and (2) any other documents on file pertaining to the complaint (or to that portion of the complaint referred to the special committee).

(d) **Continuing qualification of committee members.** A member of a special committee who was qualified at the time of appointment may continue to serve on the committee even though the member relinquishes the position of chief judge, or active judge, as the case may be, but only if the member continues to hold office as a senior judge.

(e) **Inability of committee member to complete service.** In the event that a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge will determine whether to appoint as a replacement member, either an active judge or a senior judge as the case may be. However, no special committee appointed under these rules will function with only a single member, and the quorum and voting requirements for a two-member committee will be applied as if the committee had three members.

Commentary on Rule 9

Membership and Presiding Officer

Rule 9 leaves the size of a special committee flexible, to be determined on a case-by-case basis. There is good reason to preserve the statutory flexibility in this regard. The question of committee size is one that should be weighed with some care in view of the potential for consuming the members' time; a large committee should be appointed only if there is a special reason to do so.

Although the statute requires that the chief judge be a member of each special committee, it does not require that the chief judge preside.⁵ Once again, the rules leave the decision for **case-by-case** determination at the time the **committee is appointed**.

Section 372(c)(9)(A) provides that a special committee will have subpoena powers as provided in 28 U.S.C. § 332(d). While it might be regarded as implicit that a special committee can exercise its subpoena power through its own presiding officer, strict compliance with the letter of section 332(d) would appear to be the safer course. Rule **9(b)** therefore invites the chief judge, when designating someone else as presiding officer, to make an explicit delegation of the authority to direct the issuance of subpoenas related to committee proceedings.

The rule does not specifically address the case in which, because of disqualification of the chief judge, another judge is exercising the powers of the chief judge in the section 372(c) proceeding. Under such circumstances, the designation to direct the issuance of subpoenas should nevertheless come from the chief judge.

Continuing Qualification

Rule 9(d) provides that a member of a special committee who remains an active judge may continue to serve on the committee even though the member's status changes. Thus, a committee that originally consisted of the chief judge and an equal number of active and senior judges, may continue to function even though changes of status alter that composition. This provision reflects the belief that stability of membership will make an important contribution to the quality of the work of such committees.

Inability of Committee Member to Complete Service

Stability of membership is also the principal concern animating rule 9(e), which deals with the case in which a special committee loses a member before its work is complete. The rule would permit the chief judge to determine whether a replacement member should be appointed. Generally, the appointment of a replacement member is desirable in these situations unless the committee has conducted evidentiary hearings before the vacancy occurs. However, other cases may also arise in which a committee is in the late stages of its work, and in which it would be difficult for a new member to play a meaningful role. The rule protects the **collegial** character of the committee process by prohibiting a single surviving member from serving as a committee and by providing that a committee of two surviving members will, in essence, operate under a unanimity rule.

RULE 10. CONDUCT OF AN INVESTIGATION

(a) Extent and methods to be determined by committee. Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in the

⁵ See H.R. Rep. No. 1313, 96th Cong., 2d Sess. 11 (1980) (chief judge may appoint another judge as presiding officer).

light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge may have engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge, expand the scope of the investigation to encompass such misconduct.

(b) Criminal matters. In the event that the complaint alleges criminal conduct on the part of a judge, or in the event that the committee becomes aware of possible criminal conduct, the committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. § 372(c)(14) in an effort to avoid compromising any criminal investigation. However, the committee will make its own determination about the time of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.

(c) Staff. The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the court or may arrange, through the Administrative Office of the United States Courts, for the hiring of special staff to assist in the investigation.

(d) Delegation. The committee may delegate duties in its discretion to subcommittees, to staff members, or to individual committee members. The authority to exercise the committee's subpoena powers may be delegated only to the presiding officer. In the case of failure to comply with such subpoena, the court or special committee may institute a contempt proceeding consistent with 28 U.S.C. § 332(d).

(e) Report. The committee will file with the judicial council a comprehensive report of its investigation, including findings of the investigation and the committee's recommendations for court action. Any findings adverse to the judge will be based on evidence in the record. The report will be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held pursuant to rule 11.

(f) Voting. All actions of the committee will be by vote of a majority of all of the members of the committee.

Commentary on Rule 10

Nature of the Process

Rule 10 and the three rules that follow are all concerned with the way in which a special committee carries out its mission. They reflect the view that a special committee has what are generally regarded in our jurisprudence as two distinct roles. The committee will often be performing an investigative role of the kind that is characteristically given to executive branch agencies in our system of justice and, in some stages, a more formalized fact-finding role. Even though the same body has responsibility for both roles under section 372(c), it is important to distinguish between them in order to ensure that due process rights are afforded at appropriate times to the judge complained about.

Criminal Matters

One of the difficult questions that can arise under the judicial discipline statute is the relationship between proceedings under this statute and criminal investigations. Rule **10(b)** assigns coordinating responsibility to the special committee in cases in which criminal conduct **is suspected** and gives the committee the authority to decide what the appropriate pace of its activity should be in light of any criminal investigation. However, **a** special committee should **not abdicate its** responsibility by assenting to indefinite deferral of **its own work**.

It is noted that a special **committee** may be barred from disclosing some information to a prosecutor or grand jury under 28 U.S.C. § 372(c)(14). This provision is discussed in the commentary under rule 16.

Delegation

Rule **10(d)** permits the committee, in **its** discretion, to delegate any of **its duties to** subcommittees, individual committee members, or staff. This is consistent with the **general** principle, expressed in rule **10(a)**, that each special committee will determine the **methods of** conducting the investigation that are appropriate in the light of the allegations of the complaint. **It is**, of course, not contemplated that the ultimate duty of adopting a report would be delegable.

Rule 9(b) suggests that, where the chief judge designates someone else as presiding **officer** of a special committee, the presiding officer also be delegated the authority to direct the clerk of the court to issue subpoenas related to committee proceedings. That is not intended to imply, **however**, that the decision to direct the issuance of a subpoena is necessarily exercisable **by the presiding** officer alone. Under rule **10(d)**, **it is** up to the committee to decide whether to delegate that **decision-making** authority.

Basis of Findings

Rule **10(e)** requires that findings adverse to the judge complained about **be** based on **evidence** in the record. There is no similar requirement in the rules for determinations favorable **to the judge**. A committee may, in some circumstances, recommend dismissal of a complaint on the ground that preliminary investigation reveals no basis for going forward with hearings on **the record**.

Voting in the Special Committee

Rule **10(f)** provides that actions of a special committee will be by vote of a majority of all the members. It seems reasonable to expect that, almost always, all the members of a committee will participate in committee decisions. In that circumstance, it seems reasonable to require that committee decisions **be made by** a majority of the membership, rather than a majority of some smaller quorum.

RULE 11. CONDUCT OF HEARINGS BY SPECIAL COMMITTEE

(a) Purpose of hearings. The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against **more** than one judge, **it** may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to judge complained about. The judge complained about will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the committee intends to call, and the text of any statements that have been taken from such witnesses. The judge may at any time suggest additional witnesses to the committee.

(c) Committee witnesses. All persons who are believed to have substantial information to offer will be called as committee witnesses. Such witnesses may include the complainant and the judge complained about. The witnesses will be questioned by committee members, staff, or both. **The** judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.

(d) Witnesses called by the judge. The judge complained about may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by committee members, staff, or both.

(e) Witness fees. Witness fees will be paid as provided in 28 U.S.C. § 1821.

(f) Rules of evidence; oath. The Federal Rules of Evidence will apply to any **evidentiary** hearing except to the extent that departures from the adversarial format of a trial make them inappropriate. All testimony taken at such a hearing will be given under oath or **affirmation**.

(g) Record and transcript. A record and transcript will be made of any hearing held.

Commentary on Rule 11

The Role of Hearings in the Investigation Process

It has already been observed that the roles of a special committee include an investigative role and a fact-finding role. In conformity with this concept of roles, hearings ordinarily are to be held only after the investigative work has been done and the committee has concluded that there **is** sufficient evidence to warrant a formal fact-finding proceeding. Rule 11 is concerned only with the conduct of hearings, and does not govern the earlier, investigative stages of a special committee's work.

Inevitably, a hearing will have something of an adversary character. The judge who has been complained about will surely feel threatened if the matter has reached this stage. Nevertheless, these tendencies should be moderated to the extent possible. Therefore, even though the special committee has two roles and that an investigation will commonly have two distinct stages, committee members should not regard themselves as prosecutors one day and judges the next. **Their** duty--and that of their staff--is at all times to be impartial.

In conformity with **this view**, rule **11(c)** contemplates that witnesses at hearings should generally be called as committee witnesses, regardless of whether their testimony will be favorable or unfavorable to the judge complained about. Staff or others who are organizing the hearings should regard it as their role to present the entire picture, and not to act as prosecutors. Even the judge complained about should normally be called as a committee witness. Although rule 1 l(d) preserves the statutory right of the judge to call witnesses on his or her own behalf, this should not often be necessary.

Testimony of Judge

It is appropriate to call the **complainee** judge as a committee witness. **This** assumes that, in most cases, the judge would wish to testify. The special committee should be the sponsor of that testimony as well as other testimony favorable to the judge. However, cases may arise in which the judge will not testify voluntarily. In such cases, subpoena power appears to be available, subject to the **normal** testimonial privileges.

Applicability of Rules of Evidence

Rule 1 l(f) provides that the Federal Rules of Evidence will apply to evidentiary hearings conducted by special committees “except to the extent that departures from the adversarial format of a trial make them inappropriate.”

RULE 12. RIGHTS OF JUDGE IN INVESTIGATION

(a) **Notice.** The judge complained about is entitled to written notice of the investigation (rule **4(f)**), to written notice of expansion of the scope of an investigation (rule **10(a)**), and to written notice of any hearing (rule 1 l(b)).

(b) **Presentation of evidence.** The judge is entitled to a hearing, and **has** the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge, **the** chief judge or his designee will direct the clerk of the court to issue a subpoena in accordance with 28 U.S.C. § 332(d)(l).

(c) **Presentation of argument.** The judge may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) **Attendance at hearings.** The judge will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any documents introduced, as well as to receive copies of any written arguments submitted by the complainant to the committee.

(e) **Receipt of committee’s report.** The judge will have the right to receive the report of the special committee at the time it is filed with the court.

(f) Representation by counsel. The judge may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne **by the United States** as provided in rule **14(h)**.

Commentary on Rule 12

Right to Attend Hearings

The statute states that rules adopted by the courts shall contain provisions requiring that “the judge . . . whose conduct is the subject of the complaint be afforded an opportunity to appear (**in person or by counsel**) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.” To implement this provision, rule 12(d) gives the judge the right to attend any hearing held by the committee. The word “hearings” is used in the rules to include sessions held for the purpose of receiving evidence of record or hearing argument.

The statute does not require that the judge be permitted to attend **all** proceedings of the special committee. Hence, the rules do not accord a right to attend such proceedings as meetings at which the committee is engaged in investigative activity (such as interviewing a possible witness or examining documents delivered pursuant to a subpoena **duces tecum** to determine if they contain relevant evidence) or meetings at which the committee is deliberating on the evidence.

RULE 13. RIGHTS OF COMPLAINANT IN INVESTIGATION

(a) Notice. The complainant is entitled to written notice of the investigation as provided in rule 4(f). Upon the filing of the special committee’s report to the court, the complainant will be notified that the report has been filed and is before the court for decision. Although the complainant is not entitled to a copy of the report of the special committee, the court may, in its discretion, release a copy of the report of the special committee to the complainant.

(b) Opportunity to provide evidence. The complainant is entitled to be interviewed by a representative of the committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.

(c) Presentation of argument. The complainant may submit written argument to the special committee at any time. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

(d) Representation by counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

Commentary on Rule 13

In accordance with the view of the process as fundamentally administrative, these rules do not give the complainant the rights of a party to litigation, and leave the complainant's role largely **within** the discretion of the special committee. However, rule **13(b)** promises complainants that, where a special committee has been appointed, the complainant will at a minimum be interviewed **by** a representative of the committee. Such an interview may, of course, be in person or by telephone, and the representative of the committee may be either a member or staff. In almost every case, such an interview would be regarded by the committee as essential in the performance of **its** task. Complainants should have an opportunity to tell **their** stories orally.

Rule 13 does not contemplate that the complainant will be permitted to attend proceedings of the special committee except when testifying or presenting argument. Opening the proceedings to the complainant would be inconsistent with the statutory mandate of confidentiality, 28 U.S.C. § 372(c)(14).

Section **372(c)(14)(A)**, as amended by section **402(c)(2)(E)** of the Judicial Discipline and Removal Reform Act of 1990, authorizes an exception to the confidentiality provisions of section **372(c)(14)** where the court has in its discretion released a copy of the report of the special committee to the complainant and to the judge who is the subject of the complaint. Since these rules view the disciplinary process as fundamentally administrative rather than adversarial, the rules do not accord the complainant the rights of a litigant and do not entitle the complainant to receipt of a copy of the report of the special committee. Therefore, it remains a matter within the discretion of the court whether to release a copy of the special committee's report to the complainant.

Chapter V: Court Consideration of Recommendations of Special Committee

RULE 14. ACTION BY COURT

(a) Purpose of court consideration. After receipt of a report of a special committee, the court will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken or that intervening events make action unnecessary, refer the complaint to the Judicial Conference of the United States, or order corrective action.

(b) Basis of court action. Subject to the rights of the judge to submit argument to the **court** as provided in rule **15(a)**, the court may take action on the basis of the report of the special committee and the **record** of any hearings held. If the court finds that the report and **record** provide an inadequate basis for decision, it may (1) order further investigation and a further report by the special committee or (2) conduct such additional investigation as it deems appropriate.

(c) Dismissal. The **court** will dismiss a complaint if it **concludes--**

(1) that the claimed conduct, even if the claim is true, is not “conduct prejudicial to the effective and expeditious administration of the business of the courts” and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling; .

(3) that the facts on which the complaint is based have not been demonstrated; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of the proceeding on the basis of corrective action taken. The court will conclude the complaint proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint, or that intervening events make such action unnecessary.

(e) Referral to Judicial Conference of the United States. The court may, in its discretion, refer a complaint to the Judicial Conference of the United States with the court’s recommendations for action. It is required to refer such a complaint to the Judicial Conference of the United States if the court determines that a judge may have engaged in conduct-

(1) that might constitute ground for impeachment; or

(2) that, in the interest of justice, is not amenable to resolution by the court.

(f) Order of corrective action. If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the court will take other action to assure the effective and expeditious administration of the business of the courts. Such action may include, among other measures--

(1) Censuring or reprimanding the judge, either by private communication or by public announcement;

(2) Ordering that, for a fixed temporary period, no new cases be assigned to the judge;

(3) Requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived;

(4) Certifying the disability of the judge under 28 U.S.C. § 372(b) who is eligible to retire but does not do so, so that an additional judge may be appointed.

(g) Combination of actions. Referral of a complaint to the Judicial Conference of the United States under paragraph (e) of this rule will not preclude the court from simultaneously taking such other action under paragraph (f) as is within its power.

(h) Recommendation about fees. Upon the request of a judge whose conduct is the subject of a complaint, the court may, if the complaint has been **finally** dismissed, recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the judiciary, for those reasonable expenses, including attorneys' **fees, incurred by** that judge during the investigation, which would not have been incurred but for the requirements of **28 U.S.C. § 372(c)** and these rules.

(i) Notice of action of court. Court action will be by written order. Unless the court finds that, for extraordinary reasons, it would be contrary to the interests of justice, the order will be accompanied by a memorandum setting forth **the** factual determinations on which it is based and the reasons for the court action. The memorandum will not include the name of the complainant **or** of the judge whose conduct was complained about. The order and the supporting memorandum will be provided to the complainant, the judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the United States pursuant to paragraph (e) of this rule and the court determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge will be notified of any right to seek review of the court's decision by the Judicial Conference of the United States and of the procedure for filing a petition **for review**.

(j) Public availability of court action. Materials related to the court's action will be made public at the time and in the manner set forth in rule 17.

Commentary on Rule 14

Basis of Court Action

Section 372(c)(6)(A) states that, upon receipt of a report from a special committee, the court may conduct any additional investigation that it considers to be necessary. While the statute does not explicitly refer to an authority to ask the special committee to do further work and file a supplemental report, such a procedure is so inherently a part of a committee process that the authority for it may safely be assumed. An investigation of any magnitude by the court would be warranted in only the rarest cases, since it would constitute a substantial drain on judicial resources. There may be some cases, however, in which a loose end can be tied up without the necessity of a remand.

Court Action

Paragraphs (6)(B), 6(C) and (7) of section 372(c) enumerate actions that the court may take after receipt of the report of a special committee and the conduct of any additional investigation that it deems necessary. There are two notable omissions from this statutory enumeration: conclusion of the proceedings on the ground that corrective action has been taken, and conclusion of the proceedings on the ground that action on the complaint is no longer necessary because of intervening

events. Moreover, the authority to take these actions does not easily fit into the catch-all clause of paragraph **(6)(B)(vii)** (“ordering such other action as it considers appropriate under the circumstances”), since the general introductory language of paragraph (6)(B) seems to assume that a finding of misconduct or disability has been made. That language authorizes the court to “take such action as is appropriate to assure the effective and expeditious administration of the business of the courts.” Nevertheless, conclusion of the proceeding on the basis of corrective action taken and conclusion of the proceeding because intervening events have made action on the complaint unnecessary must be considered action permitted under paragraph **(6)(B)(vii)**. In these rules, they are included in the enumerated alternatives for court action.

Combination of Actions

Rule 14(g) states that referral of a complaint to the Judicial Conference of the United States, will not preclude the court from simultaneously taking other action to assure the effective and expeditious administration of the business of the courts.

Referral to the Judicial Conference of the United States may take place under either clause (A) or clause **(B)** of section 372(c)(7). Clause (A) states that, “[i]n addition to the authority [to take appropriate action] granted under paragraph **(6)**,” courts may, in their discretion, refer matters to the Judicial Conference of the United States with recommendations for action by the Conference. Clause **(B)** mandates court referral of complaints to the Judicial Conference in certain circumstances; it is not introduced with the phrase, “In addition to the authority granted under paragraph **(6)**.” This distinction in the introductory language was not intended to suggest a difference in the authority of the court to take corrective action simultaneously with referral of a matter to the Conference. The phrase “In addition to” in clause (A) says no more than that referral is another action within the court’s authority, in addition to those actions listed in paragraph (6).

Attorneys’ Fees

Section **372(c)(16)**, as amended by § 402(h) of the Judicial Discipline and Removal Reform Act of 1990, makes explicit the authority of the court, upon the request of the judge who is the subject of the complaint, to recommend to the Director of the Administrative Office of the United States Courts that the judge who is the subject of the complaint be reimbursed for reasonable expenses, including attorneys’ fees, incurred during the investigation. Under the statutory provision, the court has the authority to recommend such reimbursement only where, after investigation by a special committee, the complaint has been finally dismissed under § 372(c)(6)(C). The statute confers upon the court no such authority where the court instead takes any other action available to it under paragraphs **6(B)** or 7 of section 372(c). Accordingly, there is no basis in the statute for a recommendation of reimbursement for attorneys’ fees where the court, after an investigation, concludes the proceeding under § **372(c)(6)(B)(vii)** on the ground that corrective action has been taken or that intervening events have made action on the complaint unnecessary.

Notice of Court Action

Rule 14(i) requires that court action normally be supported with a memorandum of factual determinations and reasons and that notice of the action be given to the complainant and the judge

complained about. The two “interests of justice” exceptions are derived from 28 U.S.C. 6 372(c)(7)(C) and (c)(15).

Right to Petition for Review of Court Action

Rule 14(i) requires that the notification to the complainant and the judge complained about include notice of any right to petition the Judicial Conference of the United States for review of the court’s decision.

It is noted that the right to petition for review is limited to orders under paragraph (6) of section 372(c). A decision of the court to refer a matter to the Judicial Conference under paragraph (7) is not reviewable.

RULE 15. PROCEDURES FOR COURT CONSIDERATION OF A SPECIAL COMMITTEE’S REPORT

(a) **Rights of judge complained about.** Within ten days after the filing of the report of a special committee, the judge complained about may address a written response to all of the members of the court; The judge will **also** be given an opportunity to present oral argument to the court, personally or through counsel. The judge may not communicate with individual court members about the matter, either orally or in writing.

(b) **Conduct of additional investigation by the court.** If the court decides to conduct additional investigation, the judge complained about will be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in rules 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the court may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.

(c) **Voting.** Court action will be taken by a majority of those members of the court who are not disqualified.

Commentary on Rule 15

Voting

The official commentary on this rule is not included here since that commentary is **not** pertinent to proceedings involving judges or personnel of the United States Court of Federal Claims.

Chapter VI: Miscellaneous Rules

RULE 16. CONFIDENTIALITY

(a) **General rule.** Consideration of a complaint by the chief judge, a special committee, or the court will be treated as confidential business, and information about such consideration will not be disclosed by any judge, employee of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.

(b) **Files.** All files related to complaints of misconduct or disability, whether maintained by the clerk, the chief judge, members of a special committee, members of the court, or staff, and whether or not the complaint was accepted for filing, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.

(c) **Disclosure in memoranda of reasons.** Memoranda supporting orders of the chief judge or the court, and dissenting opinions or separate statements of members of the court, may contain such information and exhibits as the authors deem appropriate, and such information and exhibits may be made public pursuant to rule 17.

(d) **Availability to Judicial Conference.** In the event that a complaint is referred under rule 14(e) to the Judicial Conference of the United States, the clerk will provide the Judicial Conference with copies of the report of the special committee and any other documents and records that were before the court at the time of its determination. Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. § 372(c)(10) for review of a court order, the clerk will furnish any other records related to the investigation.

(e) **Removal proceedings.** The court may release to the legislative branch any materials that are believed necessary to investigation of a judge or a trial on articles of impeachment.

(f) **Consent of judge complained about.** Any materials from the files may be disclosed to any person upon the written consent of both the judge complained about and the chief judge of the court. The chief judge may require that the identity of the complainant be shielded in any materials disclosed.

(g) **Disclosure by court in special circumstances.** The court may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that the court concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. § 372(c)(14).

(h) **Disclosure of identity by judge complained about.** Nothing in this rule will preclude the judge complained about from acknowledging that he or she is the judge referred to in documents made public pursuant to rule 17.

Commentary on Rule 16

Scope of Confidentiality Requirement

Section **372(c)(14)** applies a rule of confidentiality to “papers, documents, and records of proceedings related to investigations conducted under this subsection” and states that they shall not be disclosed “by any person in any proceeding,” with enumerated exceptions. Three questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and who is within the circle of people who may have access to information without breaching the rule?

With regard to the first question, rule 16(a) provides that judges, employees of the judicial branch, and people involved in recording proceedings and preparing transcripts are obliged to respect the confidentiality requirement. This of course includes judges who may be the subjects of complaints.

With regard to the second question, the reference to “investigations” suggests that section **372(c)(14)** technically applies only in cases in which a special committee has been appointed. However, rule 16(a) applies the rule of confidentiality more broadly, covering consideration of a complaint at any stage.

With regard to the third question, it seems clear that there is no barrier of confidentiality between a court and the Judicial Conference, and that members of the Judicial Conference or its standing **committee may** have access to any of the confidential records for use in their consideration of a referred matter or a petition for review.

On the other hand, the statute makes it clear that there is a barrier of confidentiality between the judicial branch and the legislative; it provides, as an exception to the rule of confidentiality, that material is to be disclosed to Congress only if it is “believed necessary to an impeachment investigation or trial of a judge.”

Exceptions to Confidentiality Rule

With regard to the exception for impeachment proceedings, rule **16(f)** tracks the statutory language, and deliberately preserves the ambiguity about who must believe that disclosure is necessary to an impeachment type investigation or trial.

Another exception to the rule of confidentiality is provided by section **372(c)(14)(B)**, which states that confidential materials may be disclosed if authorized in writing by the judge complained about and by the chief judge of the court.

Rule 16 also recognizes that there must be some implicit exceptions to the confidentiality requirement. For example, 28 U.S.C. § **372(c)(15)** requires that certain orders and the reasons for them shall be made public; it would be a barren collection of reasons **that** could not refer to the evidence. Rule 16(c) thus makes it explicit that memoranda supporting chief judge and court orders, as well as dissenting opinions and separate statements, may contain references to information that would otherwise be confidential and that such information may be made public.

Rule 16(g) permits disclosure of additional information by order of the court in circumstances not enumerated. Unfortunately, the statutory language does not explicitly authorize exceptions, so many cases will present issues of statutory interpretation. A strong case could be made for disclosure to permit a prosecution for perjury based on testimony given before a special committee. A more difficult case would be presented if a special committee turned up evidence of criminal conduct by a judge and wanted to refer the matter to a grand jury. The rule refers to the statutory prohibition but does not attempt to resolve such questions.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) **General rule.** A docket-sheet record of orders of the chief judge and the court and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the court will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee, or if it is disposed of by court order dismissing the complaint for reasons other than mootness or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge complained about without his or her consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge will be disclosed.

(4) If the complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, at any time after the appointment of a special committee, the court will determine whether the name of the judge is to be disclosed.

The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) **Manner of making public.** The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court. The clerk will send copies of the publicly available materials to the Federal Judicial Center, One Columbus Circle, N.E., Washington DC 20002, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) Decisions of Judicial Conference standing committee. To the extent consistent with the policy of the Judicial Conference Committee to Review, Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this court will also be made available to the public in the office of the clerk of the court.

(d) Special rule for decisions of court. When the court has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the court's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) Complaints referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

Commentary on Rule 17

Section 372(c)(15) provides that "[e]ach written order to implement any action under paragraph (6)(B) of this subsection" shall be made publicly available and that, "[u]nless contrary to the interest of justice," each such order shall be accompanied by written reasons. Section 372(c)(14) states that "papers, documents, and records of proceedings related to investigations" shall be confidential. Section 372(c)(6) lists, among possible court actions following an investigation, censure or reprimand "by means of private communication" or "by means of public announcement." These three provisions exhaust the statutory guidance with respect to public availability of decisions on complaints.

The prevailing practice in most of the circuits appears to be that orders following an investigation are made public, with the name of the judge included, and that these are the only documents made public at the court level. The Judicial Conference's standing committee has treated its decisions as available to the public. With regard to dispositions by the chief judge, the more general practice is not to permit public access.

The statute and its legislative history exhibit a strong policy goal of protecting judges from the damage that could be done by publicizing unfounded allegations of misconduct. Except in cases in which the proposed Court on Judicial Conduct and Disability held a de novo hearing, the Senate-passed bill specifically provided for confidentiality at all stages of the complaint procedure "unless final adverse action is taken against a judge, not including an order of dismissal."⁶ Although the language of the final legislation is derived from the House bill⁷ and is limited to materials "related to investigations," there is no indication that nonconfidential treatment of other materials was contemplated.

⁶ S. 1873, 96th Cong., 1st Sess. § 2(a) (1979) (proposed 28 U.S.C. § 372(n)(1)(C)); see S. Rep. No. 362, 96th Cong., 1st Sess. 16 (1979).

⁷ H.R. 7974, 96th Cong., 2d Sess. § 3(a) (1980) (proposed 28 U.S.C. § 372(c)(14)).

It is consistent with the congressional intent to protect a judge from public disclosure of a complaint, both while it is pending and after it has been dismissed if that should be the outcome. On the other hand, the goal of assuring the public that the disciplinary mechanism is operating satisfactorily is better served by making the process more open.

Rule 17 attempts to accommodate these conflicting interests. It provides for public availability of decisions of the chief judge and the court, and the texts of any memoranda supporting their orders, together with any dissenting opinions or separate statements by members of the court. However, these orders and memoranda are to be made public only when final action on the complaint has been taken and any right of review has been exhausted. Whether the name of the judge is disclosed will then depend upon the nature of the final action. If the **final** action is an order predicated on a finding of misconduct or disability (other than censure or reprimand by means of private communication) the name of the judge will be made public. If the **final** action is dismissal of the complaint, or a conclusion of the proceeding by the chief judge on the basis of corrective action taken, the name of the judge will not be disclosed.

If a complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, after appointment of a special committee, rule 17(a)(4) leaves it to the court to determine whether the judge will be identified. In such a case, no final decision has been reached on the merits, but it may be in the public interest-particularly if a judicial officer resigns in the course of an investigation--to make the identity of the judge known.

It should be noted that rule 17 provides for apparently inconsistent treatment where a proceeding is concluded on the basis of corrective action taken. If a chief judge concludes a proceeding on that basis, rule 17(a)(1) provides that the name of the judge will not be disclosed. Shielding the name of the judge in this circumstance should contribute to the frequency of this kind of informal disposition. Once a special committee has been appointed, and a proceeding is concluded by the court on the basis of corrective action taken, rule 17(a)(3) provides for disclosure of the name of the judge. An "informal" resolution of the complaint at this stage is likely to look very much like any other court order, and should be disclosed in the same manner.

The proposal that decisions be made public only after final action has been taken is designed in part to avoid disclosure of the existence of pending proceedings. Because the Judicial Conference has not established a deadline for filing petitions for review with its standing committee, rule 17(d) provides for making decisions public if thirty days have elapsed without the filing of a petition for review.

Public availability of orders under 28 U.S.C. § 372(c)(6)(B) is a statutory requirement. The statute does not prescribe the time in which these orders must be made, public, and it might be thought implicit that it should be without delay. Similarly, the statute does not state whether the name of the judge must be disclosed. However, in view of the legislative interest in protecting a judge from public **airing** of unfounded charges, the law is reasonably interpreted as permitting nondisclosure of the identity of a judicial **officer** who is ultimately exonerated and also permitting delay in disclosure until the ultimate outcome is known. In this connection it should be noted that congressional leaders described the public availability requirement as applying to “sanctioning orders.”⁸

Finally, the rule provides that the identity of the complainant will be disclosed only if the chief judge so orders. Identifying the complainant when the judge is not identified would of course increase the likelihood that the identity of the judge would become publicly known, thus thwarting the policy of nondisclosure. If the identity of the complainant is not to be made public in such cases, **no** particular reason exists to change the rule and make it public routinely in cases in which the judge is identified. However, it may not always be practicable to shield the complainant’s identity while **making** public disclosure of the court’s order and supporting memoranda; in some circumstances, moreover, the complainant may consent to public identification.

RULE 18. DISQUALIFICATION

(a) Complainant. If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. A chief judge who has identified a complaint under rule 2(j) will not be automatically disqualified from participating in the consideration of the complaint but may consider in his or her discretion whether the circumstances warrant disqualification.

(b) Judge complained about. A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge who is complained about.

(c) Disqualification of chief judge on consideration of a petition for review of a chief judge’s order. If a petition for review of a chief judge’s order dismissing a complaint or concluding a proceeding is filed with the court pursuant to rule 5, the chief judge will not participate in the court’s consideration of the petition. In such a case, the chief judge may address a written communication to all of the members of the court, with **copies** provided to the complainant and to the judge complained about. The chief judge may not communicate with individual **court** members about the matter, either orally or in writing.

⁸ 126 Cong. Rec. 28,093 (1980) (remarks of Sen. DeConcini); id. at 28,617 (remarks of Rep. Kastenmeier).

(d) Member of special committee not disqualified. A member of the court who is appointed to a special committee will not be disqualified from participating in court consideration of the committee's report.

(e) Judge under investigation. Upon appointment of a special committee, the judge **complained** about will automatically be disqualified from serving (1) on any special committee appointed under rule 4(e), and (2) as part of the court when acting under these rules. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review. The proceedings will be deemed terminated thirty days after the final action of the court if no petition for review has at that time been filed with the Judicial Conference.

(f) Substitute for disqualified chief judge. If the chief judge of the court is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the judge in regular active service who is the most senior in date of original appointment of those who are not disqualified.

Commentary on Rule 18

Disqualification of Chief Judge on Review of Chief Judge's Order

Whether the chief judge should participate in decisions on petitions to the court is a question that has engendered some disagreement. Rule 18(c) would bar such participation. Such a policy is calculated to assure complainants that their petitions will receive fair consideration.

Disqualification of Judge Under Investigation

28 U.S.C. § 372(c)(12) states that a judge under investigation will be disqualified from certain activities "until all related proceedings under this subsection have been finally terminated." In the absence of Judicial Conference rules regulating the time within which a petition for review must be filed, rule 18(e) provides that the proceedings will be deemed terminated if no petition for review is filed within thirty days after the final action of the court.

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint pending before chief judge. A complaint that is before the chief judge for a decision under rule 4 may be withdrawn by the complainant with the consent of the chief judge.

(b) Complaint pending before special committee or court. After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge complained about and (2) the special committee (before its report has been filed) or the court.

(c) Petition for review of chief judge's disposition. A petition to the court for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the court acts on the **petition**.

Commentary on Rule 19

Rule 19 treats the complaint proceeding, once begun, as a matter of public business rather than as the property of the complainant. The complainant is denied the unrestricted power to terminate the proceeding by withdrawing the complaint.

Under rule 19(a), a complaint pending before **the chief judge may be withdrawn if the chief judge consents. In appropriate cases, the chief judge may accordingly be saved the burden of** preparing a formal order and supporting memorandum.

If the chief judge appoints a special committee, however, rule **19(b)** provides that the complaint may be withdrawn only with the consent of both the body before which it is **pending (the special committee or the court)** and the judge complained about. Once a complaint has reached the stage of appointment of a special committee, the **complainee** is thus given the right to insist that the matter be resolved on the merits, thereby escaping the ambiguity that might remain if the proceeding were terminated by withdrawal of the complaint.

With regard to petitions for court review, rule 19(c) grants the petitioner unrestricted authority to withdraw the petition. It is thought that the public's interest in the proceeding is -adequately protected, since there will necessarily have been a decision by the chief judge **in** such a case.

RULE 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 372(c) will not preclude the chief judge or the court from considering any information that may come to their attention suggesting that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all the duties of office by reason of disability.

Commentary on Rule 20

Rule 20 reflects the fact that the enactment of section 372(c) was not intended to displace the historic functions of the chief judge and the court to respond to problems that come to their attention. As stated by Senator **DeConcini** in his remarks upon final Senate passage of the 1980 act, "the informal, **collegial** resolution of the great majority of meritorious disability or disciplinary matters is to be the rule rather than the exception. Only in the rare case will it be deemed necessary to invoke the formal statutory procedures and sanctions provided for in the **act.**"⁹

⁹ 126 Cong. Rec. 28,092 (1980).

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by rule 2 will be available without charge in the office of the clerk of the court.

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after June 2, 1993 and to all complaints pending as of that date that were filed on or after March 1, 1991. The handling of complaints filed before that date will be governed by the rules previously in effect.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the court for the study of rules of practice and internal operating procedures shall also constitute the advisory committee for the study of these rules, as provided by 28 U.S.C. § 2077(b), and shall make any appropriate recommendations to the court concerning these rules.